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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DARLENE JAMES, Individually, and as
Successor-in-Interest to CHARLES E.
JAMES, Deceased; FAAGALOGALO
FAIAIPAU, as Wrongful Death Heir, and as
Successor-in-Interest to SAIPELE
FAIAIPAU, Deceased, and DARCY
FAIAIPAU and SIVAITOI GRACE FIAUI,
as Legal Heirs of SAIPELE FAIAIPAU,
Deceased; and ARTHUR L. LAUREY and
FRANCIS LAUREY,

Plaintiffs,

vs.

UNITED STATES FIDELITY AND
GUARANTY COMPANY, and THE
TRAVELERS COMPANIES, INC.

Defendants.

Case No.

**COMPLAINT FOR: (1) RECOVERY OF
JUDGMENT UNDER INSURANCE CODE
§ 11580(B)(2); (2) RECOVERY OF
JUDGMENT UNDER CODE OF CIVIL
PROCEDURE § 708.210; AND (3) BREACH
OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, DARLENE JAMES, FAAGALOGALO FAIAIPAU, DARCY FAIAIPAU,
SIVAITOI GRACE FIAUI, ARTHUR L. LAUREY and FRANCIS LAUREY (collectively,
“Plaintiffs”) hereby assert the following complaint against Defendants, UNITED STATES
FIDELITY AND GUARANTY COMPANY (“USF&G”) and THE TRAVELERS COMPANIES,
INC. (“TRAVELERS”) (collectively “Defendants”).

NATURE OF THE ACTION

1
2 1. This is an action for: (1) recovery on a judgment pursuant to Insurance Code
3 § 11580(b)(2); (2) recovery on a judgment under California Code of Civil Procedure § 708.210; and
4 (3) breach of the implied covenant of good faith and fair dealing. As set forth below, each of the
5 Plaintiffs obtained a judgment against Defendants’ insured—BAY DECKING COMPANY, INC.
6 (“Bay Decking”)—for damages arising from asbestos exposure, which Defendants have wrongfully
7 refused to pay, resulting in substantial harm to Plaintiffs.

8 2. In 2015, CHARLES E. JAMES and DARLENE JAMES (collectively “James
9 Plaintiffs”), brought claims against Bay Decking for damages arising from Charles E. James’s
10 exposure to asbestos.

11 3. James Plaintiffs subsequently obtained a Default Judgment of \$20,539,848.00 against
12 Bay Decking on October 26, 2016.

13 4. Charles E. James passed away on February 9, 2018. Darlene James brings this suit
14 individually and as Successor-in-Interest to Charles E. James.

15 5. In 2013, FAAGALOGALO FAIAIPAU, as Wrongful Death Heir, and as Successor-
16 in-Interest to SAIPELE FAIAIPAU, Deceased, and DARCY FAIAIPAU and SIVAITOI GRACE
17 FIAUI, as Wrongful Death Heirs of Saipale Faiaipau (collectively “Faiaipau Plaintiffs”), brought
18 claims against Bay Decking for damages arising from Saipale Faiaipau’s exposure to asbestos.

19 6. Faiaipau Plaintiffs subsequently obtained a Default Judgment of \$2,560,000.00 against
20 Bay Decking on August 16, 2017.

21 7. In 2014, ARTHUR L. LAUREY and FRANCIS LAUREY (collectively “Laurey
22 Plaintiffs”), brought claims against Bay Decking for damages arising from Arthur L. Laurey’s
23 exposure to asbestos.

24 8. Laurey Plaintiffs subsequently obtained a Default Judgment of \$20,542,525.99 against
25 Bay Decking on September 13, 2018.

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17. Plaintiff Faagalologo Faiaipau is an adult citizen and resident of the State of California.

18. Plaintiff Darcy Faiaipau is an adult citizen and resident of the State of California.

19. Plaintiff Sivaitoi Grace Fiaui is an adult citizen and resident of the State of California.

20. Plaintiff Arthur Laurey is an adult citizen and resident of the State of Arizona.

21. Plaintiff Francis Laurey is an adult citizen and resident of the State of Arizona.

22. Defendant USF&G is, and at all relevant times was, engaged in the business of selling liability insurance policies. USF&G is a corporation duly organized and existing under the laws of the State of Connecticut with its principal place of business in Connecticut.

23. Defendant Travelers is, and at all relevant times was, engaged in the business of selling liability insurance policies. Travelers is a corporation duly organized and existing under the laws of the State of Minnesota and maintaining a place of business in Hartford, Connecticut.

FACTS

I. THE DEFAULT JUDGMENTS AGAINST BAY DECKING

A. Charles E. James's Default Judgment Against Bay Decking

24. For years, as a contractor, Bay Decking owned, leased, maintained, managed, and/or controlled several premises around California where Charles E. James was present. Upon information and belief, those jobsites may have included, but are not limited to: Bethlehem Shipyard (San Francisco, CA), Todd Shipyard (Alameda, CA), Naval Air Station (Alameda, CA), Hunters Point Naval Shipyard (San Francisco, CA), Willamette Shipyard (aka WISCO) (Richmond, CA), Southwest Marine (San Francisco, CA), Mare Island Naval Shipyard (Vallejo, CA), Triple A. Machine Shop, Hunters Point (San Francisco, CA), Service Engineering Co. (San Francisco, CA), and several United States Navy ships including FLINT (AE-32), Haleakala (AE-25), Hepburn (FF-1055), and Enterprise (CVN-65).

25. Bay Decking caused certain asbestos-and silica-containing insulation, other building materials, products and toxic substances to be constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed on each of the aforesaid premises, by their own workers and/or by

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1 various contractors, and caused the release of dangerous quantities of toxic asbestos fibers into the
2 ambient air and thereby created a hazardous and unsafe condition to Charles E. James.

3 26. Charles E. James was exposed to dangerous quantities of asbestos fibers and other
4 toxic substances released into the ambient air by the aforesaid hazardous conditions and activities
5 managed, maintained, initiated, and/or otherwise created, controlled, or caused by Bay Decking.

6 27. Beginning in 1969, Charles E. James was exposed to and inhaled, ingested, or
7 otherwise absorbed large amounts of asbestos dust or fibers emanating from asbestos or asbestos-
8 containing products that were constructed, installed, maintained, used, supplied, replaced, repaired,
9 and/or removed by Bay Decking, as a result of which he suffered severe and permanent injuries.

10 28. Charles E. James was diagnosed with lung cancer on or about December 2014.

11 29. On February 6, 2015, Charles E. James and his wife, Darlene James, filed a complaint
12 against Bay Decking alleging Negligence II and Loss of Consortium.

13 30. James Plaintiffs submitted evidence about Charles E. James's exposure to asbestos
14 constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed by Bay
15 Decking, his medical condition, and his economic and their non-economic damages.

16 31. On October 26, 2016, the Superior Court for the County of San Francisco entered a
17 Notice of Default Judgment against Bay Decking, allowing James Plaintiffs to recover
18 \$20,539,848.00 in damages for the asbestos-related bodily injury suffered from exposure to asbestos
19 and asbestos-containing products caused by Bay Decking. The default judgment was based upon the
20 application filed, the memoranda of points and authorities, the supporting declarations, the exhibits,
21 and the related argument by counsel.

22 32. The judgment became final and non-appealable on April 24, 2017.

23 33. Charles E. James passed away on February 9, 2018.

24 **B. Faiaipau Plaintiffs' Default Judgment Against Bay Decking**

25 34. For years, as contractor, Bay Decking owned, leased, maintained, managed, and/or
26 controlled several premises around California where Saipele Faiaipau was present. Upon information
27 and belief, those jobsites may have included, but are not limited to: Triple A Machine Shop
28 (Richmond, CA), various shipyards/ships, and Hunters Point Naval Shipyard (San Francisco, CA).

35. Bay Decking caused certain asbestos- and silica-containing insulation, other building materials, products and toxic substances to be constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed on each of the aforesaid premises, by their own workers and/or by various contractors, and caused the release of dangerous quantities of toxic asbestos fibers into the ambient air and thereby created a hazardous and unsafe condition to Saipale Faiaipau.

36. Saipale Faiaipau was exposed to dangerous quantities of asbestos fibers and other toxic substances released into the ambient air by the aforesaid hazardous conditions and activities managed, maintained, initiated, and/or otherwise created, controlled, or caused by Bay Decking.

37. Beginning in 1978, Saipale Faiaipau was exposed to and inhaled, ingested, or otherwise absorbed large amounts of asbestos dust or fibers emanating from asbestos or asbestos-containing products that were constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed by Bay Decking, as a result of which he suffered severe and permanent injuries.

38. Saipale Faiaipau was diagnosed with lung cancer on or about March 2010 and passed away on October 4, 2012.

39. On April 10, 2013, Faiaipau Plaintiffs brought a wrongful death suit against Bay Decking and other defendants.

40. Faiaipau Plaintiffs submitted evidence about Saipale Faiaipau's exposure to asbestos constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed by Bay Decking, his medical condition, and his economic and their non-economic damages.

41. On August 16, 2017, the Superior Court for the County of Alameda entered a Notice of Default Judgment against Bay Decking, allowing Faiaipau Plaintiffs to recover \$2,560,000 in damages for wrongful death caused by Bay Decking. The default judgment was based upon the application filed, the memoranda of points and authorities, the supporting declarations, the exhibits, and the related argument by counsel in the Underlying Case.

42. The judgment became final and non-appealable on February 13, 2018.

C. Laurey Plaintiffs' Default Judgment Against Bay Decking

43. For years, as a contractor, Bay Decking owned, leased, maintained, managed, and/or controlled several premises around California where Arthur L. Laurey was present. Upon information

1 and belief, those jobsites may have included, but are not limited to: Triple A Machine Shop (San
2 Francisco, CA), Mare Island Naval Shipyard (Vallejo, CA), Bethlehem Steel, Pier 70 (San Francisco,
3 CA), Naval Air Station (Alameda, CA), Todd Shipyard (Alameda, CA), Long Beach Naval Shipyard
4 (Long Beach, CA), and Willamette Iron Steel (Richmond, CA), and various ships and shipyards
5 including Flint (AE-32) and Haleakala (AE-25).

6 44. Bay Decking caused certain asbestos- and silica-containing insulation, other building
7 materials, products and toxic substances to be constructed, installed, maintained, used, supplied,
8 replaced, repaired, and/or removed on each of the aforesaid premises, by their own workers and/or by
9 various contractors, and caused the release of dangerous quantities of toxic asbestos fibers into the
10 ambient air and thereby created a hazardous and unsafe condition to Arthur L. Laurey.

11 45. Arthur L. Laurey was exposed to dangerous quantities of asbestos fibers and other
12 toxic substances released into the ambient air by the aforesaid hazardous conditions and activities
13 managed, maintained, initiated, and/or otherwise created, controlled, or caused by Bay Decking.

14 46. Beginning in 1973, Arthur L. Laurey was exposed to and inhaled, ingested, or
15 otherwise absorbed large amounts of asbestos dust or fibers emanating from asbestos or asbestos-
16 containing products that were constructed, installed, maintained, used, supplied, replaced, repaired,
17 and/or removed by Bay Decking, as a result of which he suffered severe and permanent injuries.

18 47. On May 29, 2014, Laurey Plaintiffs filed a complaint for Negligence II and Loss of
19 Consortium against Bay Decking and other defendants.

20 48. Laurey Plaintiffs submitted evidence about Arthur L. Laurey's exposure to asbestos
21 constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed by Bay
22 Decking, his medical condition, and his economic and their non-economic damages.

23 49. On September 13, 2018, the Superior Court for the County of San Francisco entered a
24 Notice of Default Judgment against Bay Decking, allowing Laurey Plaintiffs to recover
25 \$20,542,525.99 in damages for the asbestos-related bodily injury suffered from exposure to asbestos
26 and asbestos-containing products caused by Bay Decking. The default judgment was based upon the
27 application filed, the memoranda of points and authorities, the supporting declarations, the exhibits,
28 and the related argument by counsel in the Underlying Case.

50. The judgment became final and non-appealable on March 12, 2019.

II. BAY DECKING'S LIABILITY INSURANCE POLICIES COVERING ASBESTOS-RELATED BODILY INJURY CLAIMS AND DEFENDANTS' REFUSAL TO PAY THE DEFAULT JUDGMENTS UNDER THE POLICIES

51. Defendants provided Bay Decking comprehensive general liability coverage under the following policies:

<u>Policy Number</u>	<u>Insurance Company Name</u>	<u>Year</u>
MP 022 736 880	United States Fidelity and Guaranty Company	1984
MP 063 699 977	United States Fidelity and Guaranty Company	1985
MP 063 714 816	United States Fidelity and Guaranty Company	1986
CIP 076968727	United States Fidelity and Guaranty Company	1987

(collectively, the "Policies").²

52. The limits of liability for the Policies were, at minimum, \$600,000 in 1984, \$600,000 in 1985, \$1,000,000 in 1986, and \$1,000,000 in 1987.

53. Upon information and belief, Defendants also provided Bay Decking comprehensive general liability coverage for at least 1980 to 1983.

54. Upon information and belief, all premiums due to Defendants under the Policies were paid by Bay Decking and Defendant, in consideration of premiums paid, executed, issued, and delivered the Policies to Bay Decking in California.

55. Upon information and belief, the Policies require Defendants to pay all sums that Bay Decking becomes legally obligated to pay for bodily injury claims against Bay Decking, as long as any bodily injury within the meaning of such Policies has taken place during the policy period.

56. Upon information and belief, Plaintiffs suffered bodily injury within the meaning of the Policies commencing upon Plaintiffs' first exposure to asbestos or asbestos-containing products constructed, installed, maintained, used, supplied, replaced, repaired, and/or removed by Bay Decking and continuing through at least the policy periods of the Policies.

57. On March 1, 2019, and again on April 9, 2019, Defendants were notified of the Plaintiffs' complaints and the default judgments against their insured, Bay Decking. This

² Upon information and belief, USF&G and/or Travelers may have issued additional comprehensive general liability policies to Bay Decking.

1 correspondence also indicated that Plaintiffs' claims against Bay Decking prompted Defendants'
2 coverage duties and obligations under the Policies.

3 58. To date, Defendants have not responded to Plaintiffs' tender letters.

4 59. To date, no part of the default judgments has been paid or satisfied.

5 60. Defendants' refusal to cover and satisfy the default judgments was unreasonable,
6 outrageous, and not in good faith.

7 61. Plaintiffs have been injured by Defendants' failure to cover and satisfy the default
8 judgments.

9 **FIRST CAUSE OF ACTION**
FOR DAMAGES UNDER INSURANCE CODE § 11580(B)(2)

10 62. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 61.

11 63. Plaintiffs brought lawsuits for bodily injury against Bay Decking.

12 64. Judgments for bodily injury were entered against Bay Decking and total
13 \$43,642,373.99.

14 65. Bay Decking's liability under the judgments is covered by the Policies issued to Bay
15 Decking in California by Defendant.

16 66. Plaintiffs are entitled to recover against Defendants on the judgments.

17 **SECOND CAUSE OF ACTION**
FOR DAMAGES UNDER CODE OF CIVIL PROCEDURE § 708.210

18
19 67. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 66
20 above.

21 68. Plaintiffs are judgment creditors of Bay Decking based on the default judgments, and
22 Bay Decking has an interest in the Policies.

23 69. Defendants bear responsibility for the Policies.

24 70. Plaintiffs are entitled to recover against Defendants on the judgments.

25 **THIRD CAUSE OF ACTION**
FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

26
27 71. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 70
28 above.

72. By virtue of the default judgments entered in the respective Superior Courts in favor of Plaintiffs, Defendants had a duty to exercise good faith in not withholding the adjudicated damages finalized in those default judgments, and Defendants' failures to pay have been unreasonable and in bad faith, causing further damage to Plaintiffs in the form of, among other things, emotional distress, anxiety, and further legal expense.

73. Since notice of the default judgments against Bay Decking was tendered to Defendants, Defendants have unreasonably refused and persisted in their unreasonable refusal to pay judgments against their insured.

74. By their above-described unreasonable refusal to pay Plaintiffs the judgment amounts entered against their insured, Defendants breached the covenant of good faith and fair dealing inherent in all contracts.

75. As a result of Defendants' conduct, Plaintiffs have suffered an ongoing loss of payments they are due, together with interest thereon, as well as consequential economic damages as a result of their loss of use of the benefits of payment to which they have been due and have not received.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment be entered against Defendants as follows:

- a. To recover \$43,642,373.99 (\$20,539,848.00 for the James Plaintiffs, \$2,560,000 for the Faiaipau Plaintiffs, and \$20,542,525.99 for the Laurey Plaintiffs), together with interest thereon at the legal rate from their respective date of entry until paid;
- b. For attorneys' fees;
- c. For costs, disbursements, and interest as permitted by law; and
- d. For such further legal and equitable relief as may be required or justified.

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JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: June 14, 2022

BRAYTON ♦ PURCELL LLP

By:



Alan R. Brayton, Esq.
David R. Donadio, Esq.
Kimberly J. Chu, Esq.
Attorneys for Plaintiffs